

## BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

In re Application of:	:	Before the Examiner:
Chan et al.	:	Pouncil, Darnell A.
	:	
Serial No.: 10/773,496	:	Group Art Unit: 3688
	:	
Filing Date: February 6, 2004	:	
	:	
Title: MARKETING PROFILE	:	IBM Corporation
STORE	:	Dept. T81/Bldg. 503
	:	P.O. Box 12915
	:	3039 Cornwallis Road
	:	Research Triangle Park, NC 27709

**APPEAL BRIEF**

Mail Stop Appeal Brief-Patents  
 Commissioner for Patents  
 P.O. Box 1450  
 Alexandria, VA 22313-1450

**I. REAL PARTY IN INTEREST**

The real party in interest is International Business Machines Corporation, which is the assignee of the entire right, title and interest in the above-identified patent application.

**II. RELATED APPEALS AND INTERFERENCES**

There are no other appeals or interferences known to Appellants, Appellants' legal representative or assignee which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

**III. STATUS OF CLAIMS**

Claims 1-7 and 22 are pending in the Application. Claims 8-21 were cancelled. Claims 1-7 and 22 stand rejected. Claims 1-7 and 22 are appealed.

#### IV. STATUS OF AMENDMENTS

Appellants have not submitted any amendments following receipt of the final office action with a mailing date of October 7, 2008.

#### V. SUMMARY OF CLAIMED SUBJECT MATTER

##### Independent Claim 13:

In one embodiment of the present invention, for a client/server system having at least a client including a graphical user interface to display a content of virtual hosted stores to a user, the virtual stores being stored in databases managed by a database management system in a resource manager. Specification, page 1, line 23 – page 2, line 4; Specification, page 2, lines 6-9; Specification, page 2, lines 24-27; Specification, page 3, lines 14-15; Specification, page 9, lines 6-14; Figure 1, elements 100, 102, 104, 110; Figure 2, elements 202, 203, 204. The graphical user interface being operatively connected to an application server having a business logic module to select the content to be displayed. Specification, page 2, lines 15-18; Specification, page 10, lines 21-23; Figure 2, element 205. A method of managing the content of the hosted virtual stores comprises creating a profile store which serves as a template and upon which the hosted stores are formatted. Specification, page 11, lines 2-4; Specification, page 12, lines 8-10; Figure 4, step 4000. The method further comprises designating one or more e-marketing spots in the hosted stores. Specification, page 12, lines 8-11; Figure 3, elements 313, 315, 317; Figure 4, steps 4000, 4002. Additionally, the method comprises setting up a marketing campaign for the hosted stores. Specification, page 12, lines 12-16; Figure 4, step 4006. Further, the method comprises creating one or more campaign initiatives in the profile store for the content to be displayed in the hosted stores. Specification, page 12, lines 12-16; Figure 4, step 4006.

##### Independent Claim 22:

In one embodiment of the present invention, a method for populating

campaign initiatives, the method comprising the step of accessing a list of pre-defined e-marketing spots for a profile store. Specification, page 12, lines 10-11. Further, the method comprises creating an e-marketing spot for the profile store by selecting the e-marketing spot from the list of pre-defined e-marketing spots. Specification, page 12, lines 10-11; Figure 4, step 4002. Additionally, the method comprises accessing a first list of pre-defined campaign initiatives for the profile store. Specification, page 12, lines 11-14. Further, the method comprises creating a campaign initiative for the profile store by selecting the campaign initiative from the first list of campaign initiatives. Specification, page 12, lines 11-14; Figure 4, step 4006. Furthermore, the method comprises accessing a second list of campaign initiatives for a hosted store. Specification, page 12, lines 11-14. In addition, the method comprises creating a campaign initiative for the hosted store by selecting the campaign initiative from the second list of campaign initiatives. Specification, page 12, lines 11-14; Figure 4, step 4006. Additionally, the method comprises selecting the e-marketing spot created for the profile store to an e-marketing spot in the hosted store. Specification, page 12, lines 21-22; Figure 4, step 4012. In addition, the method comprises scheduling the campaign initiative created for the profile store to the e-marketing spot in the hosted store. Specification, page 12, lines 23-25; Figure 4, step 4014. Furthermore, the method comprises scheduling the campaign initiative created for the hosted store to the e-marketing spot in the hosted store. Specification, page 12, lines 25-27; Figure 4, step 4016. Further, the method comprises rejecting the scheduling of the campaign initiative created for the hosted store if there is a conflict between the campaign initiative created for the profile store and the campaign initiative created for the hosted store. Specification, page 13, lines 1-6; Figure 4, step 4020.

## VI. GROUND OF REJECTION TO BE REVIEWED ON APPEAL

A. Claims 1-4 and 7 stand rejected under 35 U.S.C. §102(b) as being anticipated by Westrope (WO 01/29716).

B. Claims 5-6 and 22 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Westrope in view of Ozer et al. (U.S. Patent No. 7,136,871) (hereinafter "Ozer").

## VII. ARGUMENT

A. Claims 1-4 and 7 are not properly rejected under 35 U.S.C. §102(b) as being anticipated by Westrope.

The Examiner has rejected claims 1-4 and 7 under 35 U.S.C. §102(b) as being anticipated by Westrope. Office Action (10/7/2008), page 2. Appellants respectfully traverse these rejections for at least the reasons stated below.

For a claim to be anticipated under 35 U.S.C. §102, each and every claim limitation must be found within the cited prior art reference and arranged as required by the claim. M.P.E.P. §2131.

1. Claim 1 is not anticipated by Westrope.

Appellants respectfully assert that Westrope does not disclose "for a client/server system having at least a client including a graphical user interface to display a content of virtual hosted stores to a user, the virtual stores being stored in databases managed by a database management system in a resource manager, the graphical user interface being operatively connected to an application server having a business logic module to select the content to be displayed" as recited in claim 1. The Examiner has not specifically addressed these limitations.

Westrope discloses a system for generating and managing an interactive advertising campaign linking advertisements in conventional media outlets (e.g., radio, television) with an online transaction site. Abstract. Westrope further discloses that the system includes a user interface that allows a user to design an advertising campaign and that generates docket templates and dockets that include details about the advertising campaign content, the media outlets selected to carry advertisements in the campaign, and the timing and frequency of the advertisements. Abstract. Further, Westrope discloses that the system may include an interface for generating

consumer response options to allow consumers to respond directly to a selected advertisement in the campaign. Abstract.

Hence, Westrope discloses a system that allows a user to design an advertising campaign and that generates docketts that include details about the advertising campaign content, the media outlets selected to carry advertisements in the campaign, and the timing and frequency of the advertisements. Further, consumers may be able to directly respond to a selected advertisement in the campaign.

However, there is no language in Westrope that discloses virtual stores being stored in databases managed by a database management system in a resource manager. Neither is there any discussion in Westrope of a graphical user interface being operatively connected to an application server having a business logic module to select the content to be displayed. Thus, Westrope does not disclose all of the limitations of claim 1, and thus Westrope does not anticipate claim 1. M.P.E.P. §2131.

In response to Appellants' above arguments, the Examiner asserts that these features have not been given patentable weight because their recitation occurs in the preamble. Office Action (10/7/2008), page 8. However, Appellants kindly point out that the above-cited language pointed out by the Appellants is not merely reciting the purpose of a process or the intended use of a structure. The above-cited claim limitations are clearly limiting, by specifying that virtual stores are stored in databases that are managed by a database management system in a resource manager. Further, the above-cited claim limitations are limiting by specifying that the graphical user interface is operatively connected to an application server having a business logic module to select the content to be displayed. Since these claim limitations are not merely reciting the purpose of a process or the intended use of a structure, but instead, recite limitations of the claim as well as provide life, meaning and vitality to the claim, then the Examiner must give these features patentable weight. *Pitney*

*Bowes, Inc. v. Hewlett-Packard Co.*, 182 F.3d 1298, 1305, 51 U.S.P.Q.2d 1161, 1165-66 (Fed. Cir. 1999); M.P.E.P. §2112.02.

The Examiner cites column 9, lines 1-14 of Westrope as disclosing "creating a profile store which serves as a template and upon which the hosted stores are formatted" as recited in claim 1. Office Action (4/23/2008), page 3; Office Action (10/7/2008), page 2. Appellants respectfully traverse.

Westrope instead discloses that the docket template interface 104 also includes presentation layout templates 308 from which the creator can select. Page 9, lines 1-2. Westrope further discloses that the presentation layout templates 308 determine the layout of the electronic response boxes and the advertisements when they are displayed to the consumer. Page 9, lines 2-4. Furthermore, Westrope discloses that the creator provides the creative content for the advertisement and may choose to attach an image, audio, and/or text file containing the creative content to the presentation layout template 308. Page 9, lines 4-6.

Hence, Westrope discloses templates which are used by a user to design an advertisement, including content, which may include text, audio and images.

There is no language in the cited passage that discloses creating a profile store. Instead, the cited passage focuses on templates used to create an advertisement. Further, there is no language in the cited passage that discloses creating a profile store which serves as a template and upon which the hosted stores are formatted. Thus, Westrope does not disclose all of the limitations of claim 1, and thus Westrope does not anticipate claim 1. M.P.E.P. §2131.

In response to Appellants' above arguments, the Examiner notes that a reference need not show the identical words as used in the claims in order to be anticipatory. Office Action (10/7/2008), page 8. Appellants agree. However, the Examiner still must explain how the cited reference discloses each of the claim limitations, especially if different language is used. M.P.E.P. §2131.

Further, in response to Appellants' above arguments, the Examiner cites page 7, lines 1-16 and page 9, lines 1-14 of Westrope in connection with the Examiner's assertion that Westrope teaches creating a profile store which serves as a template and upon which the hosted stores are formatted. Office Action (10/7/2008), pages 8-9. Appellants respectfully traverse.

Westrope instead discloses that the docket template interface 104 also includes presentation layout templates 308 from which the creator can select. Page 9, lines 1-2. Westrope further discloses that the presentation layout templates 308 determine the layout of the advertisements when they are displayed to the consumer. Page 9, lines 2-4. Furthermore, Westrope discloses that the creator provides the creative content for the advertisement and may choose to attach an image, audio, and/or text file containing the creative content to the presentation layout template 308. Page 9, lines 4-6.

Hence, Westrope discloses templates which are used by a user to design an advertisement, including content, which may include text, audio and images.

There is no language in the cited passage that discloses creating a profile store. Instead, the cited passage focuses on templates used to create an advertisement. Creating an advertisement is not creating a profile store. The Examiner is not interpreting the claims in light of the Specification. While the Examiner may construe the claims broadly, the Examiner cannot construe the claims in such a manner that it is inconsistent with the interpretation that those skilled in the art would reach. "Virtual stores," which refers to an online store offering a compelling shopping experience, are based on a profile store. See, e.g., Appellants' Specification, page 1, lines 15-22; page 11, lines 1-4; page 12, lines 8-10. Further, there is no language in the cited passage that discloses creating a profile store which serves as a template and upon which the hosted stores are formatted.

Additionally, Westrope discloses that the information selected or entered by the creator acts as filtering criteria for selecting media licensees that meet the owner's

target market. Page 7, lines 1-3. Westrope further discloses that possible fields include geographic coverage, the type of media licensee (e.g., newspaper, magazine, radio, etc.), category, format, target audience, and the media licensee's name. Page 7, lines 3-6. Additionally, Westrope discloses that as the owner enters filtering criteria into the system 100 via the response fulfillment campaign interface 102, the system 100 provides a list of potential media licensees meeting the chosen criteria. Page 7, lines 6-8.

Hence, Westrope discloses selecting media licensees (e.g., newspaper, magazine, radio) that meet the owner's target market.

There is no language in the cited passage that discloses creating a profile store. Instead, the cited passage is focused on selecting media licensees which are conventional media channels, such as billboards, print, television, radio and packaging, as specifically discussed on page 2, lines 9-11 of Westrope. Neither is there any language in the cited passage that discloses creating a profile store which serves as a template and upon which the hosted stores are formatted. There is no discussion of a template. Instead, the information selected or entered by the creator is used for selecting conventional media channels that meet the owner's target market.

Thus, Westrope does not disclose all of the limitations of claim 1, and thus Westrope does not anticipate claim 1. M.P.E.P. §2131.

The Examiner further cites page 9, lines 1-14 of Westrope as disclosing "designating one or more e-marketing spots in the hosted stores" as recited in claim 1. Office Action (4/23/2008), page 3; Office Action (10/7/2008), page 2. Appellants respectfully traverse.

As stated above, Westrope discloses templates which are used by a user to design an advertisement, including content, which may include text, audio and images.



There is no language in the cited passage that discloses designating one or more e-marketing spots in the hosted stores. An embodiment of a hosted store is illustrated as element 310 in Figure 3 of Appellants' Specification. See, e.g., Appellants' Specification, page 12, lines 14-16. A hosted store is a virtual store as discussed at least in part on page 1, lines 17-22 of Appellants' Specification. Instead, Westrope discloses a system for generating and managing an interactive advertising campaign linking advertisements in conventional media outlets (radio, television, billboards).

Thus, Westrope does not disclose all of the limitations of claim 1, and thus Westrope does not anticipate claim 1. M.P.E.P. §2131.

In response to Appellants' above arguments, the Examiner cites page 9, lines 1-14 of Westrope as allegedly teaching "that different docket templates may be required if the response fulfillment campaign uses different creative content for different advertisements or if the response options offered are different for different media licensees participating in the same response fulfillment campaign." Office Action (10/7/2008), page 9. Appellants though could not identify any language on page 9, lines 1-14 of Westrope that support such a supposition.

Instead, Westrope teaches that the docket template interface 104 includes presentation layout templates 308 from which the creator can select. Page 9, lines 1-2. Westrope further teaches that the presentation layout templates 308 determine the layout of the electronic response boxes and the advertisements when they are displayed to the consumer. Page 9, lines 2-4. Furthermore, Westrope teaches that the creator provides the creative content for the advertisement and may choose to attach an image, audio, and/or text file containing the creative content to the presentation layout template 308. Page 9, lines 4-6. Additionally, Westrope teaches that the docket template interface 104 may also include a field where the owner can insert formatted text to appear in the advertisement. Page 9, lines 7-9. Further, Westrope

teaches that the presentation layout templates allow the creator to design multiple interactive advertisements quickly and efficiently. Page 9, lines 12-14.

Hence, Westrope teaches providing the creative content for the advertisement and choosing to attach an image, audio, and/or text file containing the creative content to the presentation layout template. Additionally, Westrope teaches that the presentation layout template allows designing multiple interactive advertisements quickly and efficiently.

There is no language in the cited passage that discloses designating one or more e-marketing spots in the hosted stores. Instead, Westrope discloses a system for generating and managing an interactive advertising campaign linking advertisements in conventional media outlets (radio, television, billboards).

Thus, Westrope does not disclose all of the limitations of claim 1, and thus Westrope does not anticipate claim 1. M.P.E.P. §2131.

The Examiner further cites page 8, lines 15-30 and page 10, lines 12-13 of Westrope as disclosing "setting up a marketing campaign for the hosted stores" as recited in claim 1. Office Action (4/23/2008), page 3; Office Action (10/7/2008), page 3. Appellants respectfully traverse.

Westrope discloses that after all of the response fulfillment campaign information has been entered into the system via the campaign interface, the system proceeds to a docket templates interface 104 so that the creator can create a docket template, which groups general response fulfillment campaign information with specific advertisement content, layout, and electronic response box option/content information for one or more selected media licensees. Page 8, lines 15-19. Westrope further discloses that once all of the above validations have been confirmed, the system 100 creates one campaign docket for each selected media licensee. Page 10, lines 12-13.

Hence, Westrope discloses allowing a user to create a docket template, which groups general response fulfillment campaign information with specific advertisement content, layout, and electronic response box option/content information for one or more selected media licensees. Further, Westrope discloses creating a campaign docket for each selected media licensee.

There is no language in the cited passages that discloses setting up a marketing campaign for the hosted stores. An embodiment of a hosted store is illustrated as element 310 in Figure 3 of Appellants' Specification. See, e.g., Appellants' Specification, page 12, lines 14-16. A hosted store is a virtual store as discussed at least in part on page 1, lines 17-22 of Appellants' Specification. Thus, Westrope does not disclose all of the limitations of claim 1, and thus Westrope does not anticipate claim 1. M.P.E.P. §2131.

Further, the Examiner cites page 10, lines 17-31 of Westrope as disclosing "creating one or more campaign initiatives in the profile store for the content to be displayed in the hosted stores" as recited in claim 1. Office Action (4/23/2008), page 3; Office Action (10/7/2008), page 3. Appellants respectfully traverse.

Westrope instead discloses that the campaign docket 106 also includes editable fields to change the frequency 400, placement and insertion of the advertisement in the selected media outlet as well as fields where the campaign docket start/end dates and times can be adjusted 402. Page 10, lines 20-24.

Hence, Westrope discloses that the campaign docket includes editable fields to change the frequency, placement and insertion of the advertisement in the selected media outlet.

There is no language in the cited passage that discloses creating one or more campaign initiatives in the profile store for the content to be displayed in the hosted stores. Instead, Westrope focuses on a system for generating and managing an interactive advertising campaign linking advertisements in convention media outlets, such as radio, television and billboards. See, for example, Abstract and page 17, line

30 – page 18, line 3 of Westrope. Thus, Westrope does not disclose all of the limitations of claim 1, and thus Westrope does not anticipate claim 1. M.P.E.P. §2131.

2. Claims 2-4 and 7 are not anticipated by Westrope.

Claims 2-4 and 7 each recite combinations of features of independent claim 1, and hence claims 2-4 and 7 are not anticipated by Westrope for at least the above-stated reasons that claim 1 is not anticipated by Westrope.

3. Claim 2 is not anticipated by Westrope.

The Examiner cites page 16, lines 23-30 of Westrope as disclosing "creating one or more local campaign initiatives for the content to be displayed in the e-marketing spots of the hosted stores" as recited in claim 2. Office Action (4/23/2008), page 3; Office Action (10/7/2008), page 3. Appellants respectfully traverse.

Westrope instead discloses that a media licensee may choose to create an independent docket if it is advertising its own products (e.g., if a newspaper wishes to place advertisements promoting itself) or if an advertiser contacts the media licensee directly to place an advertisement. Page 16, lines 23-26. Westrope further discloses that in each case, the advertisement and its corresponding independent docket is created without going through an advertising agency or planning an entire advertising campaign. Page 16, lines 26-28.

Hence, Westrope discloses that a media licensee may choose to create an independent docket to generate a specific advertisement for the media licensee without going through an advertising agency or planning an entire advertising campaign.

There is no language in the cited passage that discloses creating one or more local campaign initiatives for the content to be displayed in the e-marketing spots of the hosted stores. As discussed above, a hosted store is a virtual store as discussed at least in part on page 1, lines 17-22 of Appellants' Specification. The Examiner has

not pointed to any language in Westrope that would suggest that a media licensee is a hosted store. Thus, Westrope does not disclose all of the limitations of claim 2, and thus Westrope does not anticipate claim 2. M.P.E.P. §2131.

4. Claim 3 is not anticipated by Westrope.

The Examiner cites page 15, lines 9-13 of Westrope as disclosing "modifying the local campaign initiatives in the hosted store" as recited in claim 3. Office Action (4/23/2008), page 3; Office Action (10/7/2008), page 3. Appellants respectfully traverse.

Westrope instead discloses that if the docket template is in a "live" phase, where the advertisement corresponding to the campaign docket is made available for consumer interaction, the creator can modify any field in the docket template if the media licensee changes the dates in the docket template, for example system sends an e-mail notification to the advertiser/advertising agency. Page 15, lines 9-13.

There is no language in the cited passage that discloses modifying the local campaign initiatives in the hosted store. As discussed above, a hosted store is a virtual store as discussed at least in part on page 1, lines 17-22 of Appellants' Specification. The Examiner has not pointed to any language in Westrope that would suggest modifying a local campaign initiative in a hosted store. Thus, Westrope does not disclose all of the limitations of claim 3, and thus Westrope does not anticipate claim 3. M.P.E.P. §2131.

5. Claim 4 is not anticipated by Westrope.

Additionally, the Examiner cites page 10, lines 20-31 of Westrope as disclosing "scheduling a time duration for the content to be displayed in the e-marketing spots of the hosted stores" as recited in claim 4. Office Action (4/23/2008), page 3; Office Action (10/7/2008), page 3. Appellants respectfully traverse.

As stated above, Westrope discloses that the campaign docket includes editable fields to change the frequency, placement and insertion of the advertisement

in the selected media outlet as well as fields where the campaign docket start/end dates and times can be adjusted.

There is no language in the cited passage that discloses scheduling a time duration for the content to be displayed in the e-marketing spots of the hosted stores. Thus, Westrope does not disclose all of the limitations of claim 4, and thus Westrope does not anticipate claim 4. M.P.E.P. §2131.

In response to Appellants' above arguments, the Examiner asserts that the ability to change the frequency is the same as scheduling a time duration for the content to be displayed. Office Action (10/7/2008), page 11. Appellants respectfully traverse. Frequency refers to the number of times an advertisement is displayed; whereas, a time duration refers to how long an advertisement is displayed.

Further, the Examiner equates the media outlet of Westrope as teaching the claimed hosted store. Office Action (11/7/2008), page 11. Appellants respectfully disagree. As Appellants have previously discussed, a media outlet as used in Westrope refers to conventional media outlets, such as billboards, print, television, radio and packaging, as specifically discussed on page 2, lines 9-11 of Westrope. However, a hosted store is a virtual store as discussed at least in part on page 1, lines 17-22 of Appellants' Specification.

6. Claim 7 is not anticipated by Westrope.

Furthermore, the Examiner cites page 12, lines 6-24 and page 15, lines 9-13 of Westrope as disclosing "modifying the campaign initiatives in the profile store" as recited in claim 7. Office Action (4/23/2008), page 4; Office Action (10/7/2008), page 3. Appellants respectfully traverse.

Westrope instead discloses that during the "planning phase" 702, the creator can modify the response fulfillment campaign as desired if no campaign dockets have been created. Page 12, lines 9-10. Westrope further discloses that if the docket template is in a "live" phase, where the advertisement corresponding to the campaign

docket is made available for consumer interaction, the creator can modify any field in the docket template if the media licensee changes the dates in the docket template, for example system sends an e-mail notification to the advertiser/advertising agency. Page 15, lines 9-13.

Hence, Westrope discloses modifying the response fulfillment campaign as desired if no campaign dockets have been created. Further, Westrope discloses that the creator can modify any field in the docket template if the media licensee changes the dates in the docket template if the docket template is in a live phase.

There is no language in the cited passages that discloses modifying the campaign initiatives in the profile store. Thus, Westrope does not disclose all of the limitations of claim 7, and thus Westrope does not anticipate claim 7. M.P.E.P. §2131.

- B. Claims 5-6 and 22 are not properly rejected under 35 U.S.C. §103(a) as being unpatentable over Westrope in view of Ozer.
  - 1. Westrope and Ozer, taken singly or in combination, do not teach at least the following claim limitations.
    - a. Claim 5 is patentable over Westrope in view of Ozer.

The Examiner cites column 3, lines 49-57; column 5, lines 61-67 and column 17, lines 34-44 of Ozer as teaching "checking for a schedule conflict between one or more of the campaign initiatives for the profile store and one or more of the local campaign initiatives for an e-marketing spot in a hosted store" as recited in claim 5. Office Action (4/23/2008), page 4; Office Action (10/7/2008), page 4. Appellants respectfully traverse.

Ozer instead teaches that advertisers typically want to deliver a precise number of impressions of the targeted advertisement, without over-delivering or under-delivering the advertisement. Column 2, lines 11-13. Ozer further teaches that for instance, an advertiser may wish 5,000,000 people between the ages of 16 and 25 to watch that advertiser's advertisement at a specific time. Column 2, lines 14-16.

Further, Ozer teaches that the advertiser wishes for 5,000,000 "impressions" of the advertisement to be displayed to the targeted market segment. Column 2, lines 16-18. Additionally, Ozer teaches that to facilitate the needs of these advertisers and maximize advertising revenue, broadcasters, as well as cable and satellite operators, want to avoid underutilization of available inventory, i.e., the expected number of advertising impression opportunities that can be reserved for advertisements, and hence want to ensure that 100% of the available inventory for the advertisement is sold. Column 2, lines 19-25.

Hence, Ozer teaches that "impressions" refers to the number of people who are targeted for the advertisement.

Ozer further teaches a planning module that is configured to facilitate the creation of advertising placements to achieve an advertising impression goal (i.e., the particular number of times that the advertisement is displayed to a target audience). Column 3, lines 49-52. Ozer further teaches embodiments of the present invention that enable an advertiser to reserve inventory to meet an advertising impression goal and to schedule the display of the associated advertisements to fulfill the goal, and optionally resolving conflicts between newly requested advertising campaigns and currently scheduled advertising campaigns. Column 5, lines 61-67. Additionally, Ozer teaches a reservation module 32 that is configured to notify an individual utilizing interface module 30 when advertising inventory is overbooked for requested target criteria. Column 17, lines 34-37. Ozer further teaches that for instance, as the individual defines the advertising impression goal and specific target criteria associated with the requested advertising campaign, reservation module 32 compares current advertising inventory availability against the requested impression count and target criteria. Column 17, lines 37-41. Additionally, Ozer teaches that based upon this comparison, reservation module 32 identifies the various conflicts between the requested and currently committed advertising inventories. Column 17, lines 42-44.



Hence, Ozer teaches a planning module that is configured to facilitate the creation of advertising placements to achieve an advertising impression goal. Ozer further teaches a reservation module configured to notify an individual when the advertising inventory is overbooked for requested target criteria. Ozer further teaches that the reservation module identifies the various conflicts between the requested and currently committed advertising inventories.

There is no language in the cited passages that teaches checking for a schedule conflict between one or more of the campaign initiatives for the profile store and one or more of the local campaign initiatives. Ozer does teach resolving conflicts between newly requested advertising campaigns and currently scheduled advertising campaigns in connection with meeting an advertising impression goal. However, there is no checking for a schedule conflict between a campaign initiative for a profile store and a local campaign initiative. Neither is there any language in the cited passages that teaches checking for a schedule conflict between one or more of the campaign initiatives for the profile store and one or more of the local campaign initiatives for an e-marketing spot in a hosted store.

Therefore, the cited passages do not teach the above-cited claim limitation as asserted by the Examiner.

b. Claim 6 is patentable over Westrope in view of Ozer.

The Examiner cites column 28, line 58 – column 29, line 8 and column 29, lines 42-53 of Ozer as teaching "choosing the campaign initiative over the local campaign initiative in case of a schedule conflict" as recited in claim 6. Office Action (4/23/2008), page 5; Office Action (10/7/2008), page 5. The Examiner further takes Official Notice that choosing between which advertisement to use is well known in the art. *Id.* Appellants respectfully traverse.

Ozer instead teaches that the offline ad engine 170 is able to identify which advertisement, and hence associated advertisement content, has been scheduled as

committed advertisements and which advertisements have been scheduled as flexible advertisements by referencing the Ad Type attribute in the metadata files. Column 28, lines 59-64. Ozer further teaches that the advertisement that has a committed attribute is "committed" to be displayed a certain number of impressions. Column 28, lines 64-66. Ozer additionally teaches that receiver module 20 has instructions to interpret the advertisement weight for committed advertisements as absolute weights. Column 28, line 66 – column 29, line 1. Ozer further teaches that all other advertisements (i.e., filler advertisements having a flexible attribute) are used to fill in the remainder of the advertising inventory for a specific target criteria for the receiver module receiving the advertisements. Column 29, lines 1-5. Additionally, Ozer teaches that in the event that a target area does not have sufficient committed advertisements to fill the available advertising inventory, offline ad engine 170 can select national or local advertisements that are rated as flexible advertisements to fill the remaining advertising inventory. Column 29, lines 41-45.

Hence, Ozer teaches that "committed advertisements" are advertisements that are committed to be displayed to a certain number of impressions ("impressions" refers to the number of people who are targeted for the advertisement). Ozer further teaches that in the event that a target area does not have sufficient committed advertisements to fill the available advertising inventory, then the remaining advertising inventory is filled with "flexible advertisements."

There is no language in the cited passage that teaches selecting one campaign initiative over another as suggested by the Examiner. There is no schedule conflict. Instead, Ozer specifically teaches including flexible advertisements if the committed advertisements do not fill the available advertising inventory. Further, there is no language in the cited passage that teaches choosing the campaign initiative over the local campaign initiative in case of a schedule conflict. While the Examiner has taken Official Notice that is well known in the art to select one of two advertisements that have a conflicting schedule, claim 6 recites that in the case of a schedule conflict, the campaign initiative is chosen over the local campaign initiative.

Therefore, the cited passages do not teach the above-cited claim limitation as asserted by the Examiner.

Further, Appellants respectfully traverse the assertion that the limitation of claim 6 is well known in the art. Appellants had previously requested the Examiner to provide a reference that teaches the limitation of claim 6 pursuant to M.P.E.P. §2144.03. See, response dated July 23, 2008, pages 14-16. The Examiner though asserts that Appellants did not effectively traverse the Official Notice. Office Action (10/7/2008), pages 11-12. Appellants respectfully disagree. Appellants provided ample explanation in the response dated July 23, 2008 as to why the Examiner erred in asserting that choosing the campaign initiative over the local campaign initiative in the case of a schedule conflict was well known in the art.

Further, the Examiner is only to use Official Notice for facts asserted to be well-known or to be common knowledge in the art that are capable of instant and unquestionable demonstration as being well-known. *In re Ahlert*, 424 F.2d 1088, 1091, 165 U.S.P.Q. 418, 420 (C.C.P.A. 1970); M.P.E.P. § 2144.03. In this case, the facts asserted to be well-known or to be common knowledge in the art are not capable of instant and unquestionable demonstration as being well-known. Accordingly, the Examiner has not presented a *prima facie* case of obviousness for rejecting claim 22.

c. Claim 22 is patentable over Westrope in view of Ozer.

Appellants respectfully assert that Westrope and Ozer, taken singly or in combination, do not teach "accessing a list of pre-defined e-marketing spots for a profile store" as recited in claim 22. The Examiner has not specifically addressed this claim limitation. All words in a claim must be considered in judging the patentability of that claim against the prior art. *In re Wilson*, 424 F.2d 1382, 1385, 165 U.S.P.Q. 494, 496 (C.C.P.A. 1970); M.P.E.P. §§2142-2143. Since the Examiner has not addressed each of the claim limitations in claim 22, the Examiner has not established a *prima facie* case of obviousness in rejecting claim. M.P.E.P. §§2142-2143.

Further, the Examiner cites page 6, lines 14-30 and page 9, lines 1-14 of Westrope as teaching "creating an e-marketing spot for said profile store by selecting said e-marketing spot from said list of pre-defined e-marketing spots" as recited in claim 22. Office Action (10/7/2008), page 6. Appellants respectfully traverse.

Westrope teaches that the response fulfillment campaign interface provides fields 202 to allow the creator to enter specific details about the response fulfillment campaign into the system for storage in a system database. Page 6, lines 18-20. Westrope additionally teaches that the docket template interface 104 also includes presentation layout templates 308 from which the creator can select. Page 9, lines 1-2. Westrope further teaches that the presentation layout templates 308 determine the layout of the electronic response boxes and the advertisements when they are displayed to the consumer. Page 9, lines 2-4. Furthermore, Westrope teaches that the creator provides the creative content for the advertisement and may choose to attach an image, audio, and/or text file containing the creative content to the presentation layout template 308. Page 9, lines 4-6.

Hence, Westrope teaches allowing the creator to enter specific details about the campaign into the system for storage in a system database. Furthermore, Westrope teaches templates which are used by a user to design an advertisement, including content, which may include text, audio and images.

There is no language in the cited passages that teaches creating an e-marketing spot for the profile store. Neither is there any language in the cited passage that teaches creating an e-marketing spot for the profile store by selecting the e-marketing spot from the list of pre-defined e-marketing spots.

Therefore, the cited passages do not teach the above-cited claim limitation as asserted by the Examiner.

Furthermore, Appellants assert that Westrope and Ozer, taken singly or in combination, do not teach "accessing a first list of pre-defined campaign initiatives for said profile store" as recited in claim 22. The Examiner has not specifically

addressed this claim limitation. All words in a claim must be considered in judging the patentability of that claim against the prior art. *In re Wilson*, 424 F.2d 1382, 1385, 165 U.S.P.Q. 494, 496 (C.C.P.A. 1970); M.P.E.P. §§2142-2143. Since the Examiner has not addressed each of the claim limitations in claim 22, the Examiner has not established a *prima facie* case of obviousness in rejecting claim. M.P.E.P. §§2142-2143.

The Examiner further cites page 8, lines 15-30 and page 9, lines 1-14 of Westrope as teaching "creating a campaign initiative for said profile store by selecting said campaign initiative from said first list of campaign initiatives" as recited in claim 22. Office Action (10/7/2008), page 6. Appellants respectfully traverse.

As stated above, Westrope teaches allowing a user to create a docket template, which groups general response fulfillment campaign information with specific advertisement content, layout, and electronic response box option/content information for one or more selected media licensees. Westrope further teaches templates which are used by a user to design an advertisement, including content, which may include text, audio and images.

There is no language in the cited passages that teaches creating a campaign initiative for the profile store. Neither is there any language in the cited passages that teaches creating a campaign initiative for the profile store by selecting the campaign initiative from the first list of campaign initiatives.

Therefore, the cited passages do not teach the above-cited claim limitation as asserted by the Examiner.

Additionally, Appellants assert that Westrope and Ozer, taken singly or in combination, do not teach "accessing a second list of campaign initiatives for a hosted store" as recited in claim 22. The Examiner has not specifically addressed this claim limitation. All words in a claim must be considered in judging the patentability of that claim against the prior art. *In re Wilson*, 424 F.2d 1382, 1385, 165 U.S.P.Q. 494, 496 (C.C.P.A. 1970); M.P.E.P. §§2142-2143. Since the Examiner has not addressed

each of the claim limitations in claim 22, the Examiner has not established a *prima facie* case of obviousness in rejecting claim. M.P.E.P. §2142-2143.

The Examiner additionally cites page 8, lines 15-30 and page 9, lines 1-14 of Westrope as teaching "creating a campaign initiative for said hosted store by selecting said campaign initiative from said second list of campaign initiatives" as recited in claim 22. Office Action (10/7/2008), page 6. Appellants respectfully traverse.

As stated above, Westrope teaches allowing a user to create a docket template, which groups general response fulfillment campaign information with specific advertisement content, layout, and electronic response box option/content information for one or more selected media licensees. Westrope further teaches templates which are used by a user to design an advertisement, including content, which may include text, audio and images.

There is no language in the cited passages that teaches creating a campaign initiative for the hosted store. Neither is there any language in the cited passages that teaches creating a campaign initiative for the hosted store by selecting the campaign initiative from the second list of campaign initiatives.

Therefore, the cited passages do not teach the above-cited claim limitation as asserted by the Examiner.

In addition, the Examiner cites page 9, lines 1-14 of Westrope as teaching "selecting said e-marketing spot created for said profile store to an e-marketing spot in said hosted store" as recited in claim 22. Office Action (10/7/2008), page 6. Appellants respectfully traverse.

As stated above, Westrope teaches templates which are used by a user to design an advertisement, including content, which may include text, audio and images.

There is no language in the cited passage that teaches selecting an e-marketing spot. Neither is there any language in the cited passage that teaches selecting an e-

marketing spot created for the profile store. Neither is there are language in the cited passage that teaches selecting an e-marketing spot created for the profile store to an e-marketing spot in the hosted store.

Therefore, the cited passage does not teach the above-cited claim limitation as asserted by the Examiner.

Further, the Examiner cites page 10, lines 17-31 of Westrope as teaching "scheduling said campaign initiative created for said profile store to said e-marketing spot in said hosted store" as recited in claim 22. Office Action (10/7/2008), page 6. Appellants respectfully traverse.

As stated above, Westrope teaches that the campaign docket includes editable fields to change the frequency, placement and insertion of the advertisement in the selected media outlet.

There is no language in the cited passage that teaches scheduling the campaign initiative created for the profile store. Neither is there any language in the cited passage that teaches scheduling the campaign initiative created for the profile store to the e-marketing spot in the hosted store.

Therefore, the cited passage does not teach the above-cited claim limitation as asserted by the Examiner.

Additionally, the Examiner cites page 10, lines 17-31 of Westrope as teaching "scheduling said campaign initiative created for said hosted store to said e-marketing spot in said hosted store" as recited in claim 22. Office Action (10/7/2008), page 6. Appellants respectfully traverse.

As stated above, Westrope teaches that the campaign docket includes editable fields to change the frequency, placement and insertion of the advertisement in the selected media outlet.

There is no language in the cited passage that teaches scheduling the campaign initiative created for the hosted store. Neither is there any language in the

cited passage that teaches scheduling the campaign initiative created for the hosted store to the e-marketing spot in the hosted store.

Therefore, the cited passage does not teach the above-cited claim limitation as asserted by the Examiner.

Further, the Examiner cites column 3, lines 49-57; column 5, lines 61-67 and column 17, lines 34-44 of Ozer as teaching "rejecting said scheduling of said campaign initiative created for said hosted store if there is a conflict between said campaign initiative created for said profile store and said campaign initiative created for said hosted store" as recited in claim 22. Office Action (10/7/2008), page 7. Appellants respectfully traverse.

As stated above, Ozer teaches a planning module that is configured to facilitate the creation of advertising placements to achieve an advertising impression goal. Ozer further teaches a reservation module configured to notify an individual when the advertising inventory is overbooked for requested target criteria. Ozer further teaches that the reservation module identifies the various conflicts between the requested and currently committed advertising inventories.

There is no language in the cited passages that teaches rejecting the scheduling of the campaign initiative created for the hosted store. Neither is there any language in the cited passages that teaches rejecting the scheduling of the campaign initiative created for the hosted store if there is a conflict between the campaign initiative created for the profile store and the campaign initiative created for the hosted store.

Therefore, the cited passages do not teach the above-cited claim limitation as asserted by the Examiner.

2. Examiner's reasoning for modifying Westrope with Ozer to include the missing claim limitation of claim 5 is insufficient to establish a *prima facie* case of obviousness.



The Examiner admits that Westrope does not teach "checking for a schedule conflict between one or more of the campaign initiatives for the profile store and one or more of the local campaign initiatives for an e-marketing spot in a hosted store" as recited in claim 5. Office Action (4/23/2008), page 4; Office Action (10/7/2008), page 4. The Examiner asserts that Ozer teaches the above-cited claim limitation. *Id.* The Examiner's reasoning for modifying Westrope with Ozer to include the above-cited claim limitation is "in order to allow the completion within the designated contractual agreements of the marketing campaigns." Office Action (4/23/2008), page 5; Office Action (10/7/2008), page 5.

In connection with the Examiner establishing the motivation for modifying Westrope with Ozer to include the above-cited claim limitation, the Examiner cites page 11, line 18 – page 12, line 24 of Westrope as teaching checking for schedule conflicts between the campaign initiatives by displaying a campaign docket summary in calendar form which the media licensees (stores) and creator (advertiser) use to design and modify their campaigns. Office Action (4/23/2008), page 4; Office Action (10/7/2008), page 4. Appellants respectfully traverse.

Westrope instead teaches that once a response fulfillment campaign has been created, the campaign summary generated by the system preferably is interactive to allow the creator to update, cancel, delete, copy, expire, or retire a campaign, depending on the status of the response fulfillment campaign. Page 11, lines 23-26. Westrope further teaches that the system may also generate an interactive campaign calendar in order to allow an owner to view the dates at which various response fulfillment campaigns will be running. Page 11, lines 26-28. Westrope additionally teaches that for the media licensee, who has access only to campaign dockets to which it is specifically assigned and its own independent dockets, the docket summaries allow the media licensee to monitor the status of its own dockets as the creators design and modify their response fulfillment campaigns. Page 12, lines 2-5.

Hence, Westrope teaches generating a campaign summary which is interactive

to allow the creator to update, cancel, delete, copy, expire, or retire a campaign, depending on the status of the response fulfillment campaign. Further, Westrope teaches that for the media licensee, who has access only to campaign dockets to which it is specifically assigned and its own independent dockets, the docket summaries allow the media licensee to monitor the status of its own dockets as the creators design and modify their response fulfillment campaigns.

There is no language that suggests that media licensees are stores as suggested by the Examiner. Westrope lists radio, television and billboards as examples of media outlets. Abstract. Neither is there any language that suggests checking for scheduling conflicts between campaign initiatives. Instead, Westrope teaches that the media licensee is able to monitor the status of its own dockets (only those campaign dockets it is specifically assigned and its own independent dockets).

Further, in order to establish a *prima facie* case of obviousness, the Examiner must provide articulated reasoning with some rational underpinning. *In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006) (cited approvingly in *KSR International Co. v. Teleflex Inc.*, 82 U.S.P.Q.2d 1385, 1396 (U.S. 2007)). However, the Examiner has not provided any rational underpinning as to how the Examiner derived the reasoning for modifying Westrope with Ozer to include the above-cited missing claim limitation. The Examiner simply states "in order to allow the completion within the designated contractual agreements of the marketing campaigns" as motivation for modifying Westrope to include the above-cited claim limitation. While the Examiner may consider many factors in finding a reason to combine, the Examiner still must explain how the Examiner derived the motivation for modifying Westrope to include the above-cited missing claim limitation. *KSR International Co. v. Teleflex Inc.*, 82 U.S.P.Q.2d 1385, 1396 (U.S. 2007). The Examiner appears to be relying upon his own subjective opinion which is insufficient to support a *prima facie* case of obviousness. *KSR International Co. v. Teleflex Inc.*, 82 U.S.P.Q.2d 1385, 1396 (U.S. 2007). Consequently, the Examiner's reasoning for modifying Westrope with Ozer is insufficient to support a *prima facie* case of obviousness for rejecting claim 5. *Id.*

Further, in order to sustain the rejection of claim 5 for obviousness, the Examiner has to provide some rational connection between the Examiner's reasoning for modifying Westrope with Ozer and the missing claim limitation. What is the rational connection between checking for a schedule conflict between one or more of the campaign initiatives for the profile store and one or more of the local campaign initiatives for an e-marketing spot in a hosted store (missing claim limitation) and allowing the completion within the designated contractual agreements of the marketing campaigns (Examiner's reasoning)?

Hence, the Examiner's rationale does not provide reasons that the skilled artisan, confronted with the same problems as the inventor and with no knowledge of the claimed invention, would modify Westrope to include the missing claim limitation of claim 5. Accordingly, the Examiner has not presented a *prima facie* case of obviousness for rejecting claim 5. *KSR International Co. v. Teleflex Inc.*, 82 U.S.P.Q.2d 1385, 1396 (U.S. 2007).

3. Examiner does not provide a rational underpinning for modifying Westrope with Ozer to include the missing claim limitation of claim 22.

As stated above, the Examiner must provide articulated reasoning with some rational underpinning to support the legal conclusion of obviousness. *KSR International Co. v. Teleflex Inc.*, 82 U.S.P.Q.2d 1385, 1396 (U.S. 2007).

The Examiner admits that Westrope does not teach "rejecting said scheduling of said campaign initiative created for said hosted store if there is a conflict between said campaign initiative created for said profile store and said campaign initiative created for said hosted store" as recited in claim 22. Office Action (10/7/2008), page 7. The Examiner asserts that Ozer teaches the above-cited missing claim limitation. *Id.* However, the Examiner has not provided any rational underpinning for modifying Westrope with Ozer to include the above-cited missing claim limitation. Hence, the Examiner has not provided a *prima facie* case of obviousness in rejecting claim 22. *KSR International Co. v. Teleflex Inc.*, 82 U.S.P.Q.2d 1385, 1396 (U.S. 2007);

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M.P.E.P. §2143.

VIII. CONCLUSION

For the reasons noted above, the rejections of claims 1-7 and 22 are in error. Appellants respectfully request reversal of the rejections and allowance of claims 1-7 and 22.

Respectfully submitted,

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**CLAIMS APPENDIX**

1. For a client/server system having at least a client including a graphical user interface to display a content of virtual hosted stores to a user, the virtual stores being stored in databases managed by a database management system in a resource manager, the graphical user interface being operatively connected to an application server having a business logic module to select the content to be displayed, a method of managing the content of the hosted virtual stores comprising the steps of:

creating a profile store which serves as a template and upon which the hosted stores are formatted;

designating one or more e-marketing spots in the hosted stores;

setting up a marketing campaign for the hosted stores; and

creating one or more campaign initiatives in the profile store for the content to be displayed in the hosted stores.

2. The method as set forth in claim 1, further comprising the step of creating one or more local campaign initiatives for the content to be displayed in the e-marketing spots of the hosted stores.

3. The method as set forth in claim 2, further comprising the step of modifying the local campaign initiatives in the hosted store.

4. The method as set forth in claim 2, further comprising the step of scheduling a time duration for the content to be displayed in the e-marketing spots of the hosted stores.

5. The method as set forth in claim 2, further comprising the step of checking for a schedule conflict between one or more of the campaign initiatives for the profile store and one or more of the local campaign initiatives for an e-marketing spot in a hosted store.

6. The method as set forth in claim 5, further comprising the step of choosing the

campaign initiative over the local campaign initiative in case of a schedule conflict.

7. The method as set forth in claim 1, further comprising the step of modifying the campaign initiatives in the profile store.

22. A method for populating campaign initiatives, the method comprising the steps of:

- accessing a list of pre-defined e-marketing spots for a profile store;
- creating an e-marketing spot for said profile store by selecting said e-marketing spot from said list of pre-defined e-marketing spots;
- accessing a first list of pre-defined campaign initiatives for said profile store;
- creating a campaign initiative for said profile store by selecting said campaign initiative from said first list of campaign initiatives;
- accessing a second list of campaign initiatives for a hosted store;
- creating a campaign initiative for said hosted store by selecting said campaign initiative from said second list of campaign initiatives;
- selecting said e-marketing spot created for said profile store to an e-marketing spot in said hosted store;
- scheduling said campaign initiative created for said profile store to said e-marketing spot in said hosted store;
- scheduling said campaign initiative created for said hosted store to said e-marketing spot in said hosted store; and
- rejecting said scheduling of said campaign initiative created for said hosted store if there is a conflict between said campaign initiative created for said profile store and said campaign initiative created for said hosted store.

**EVIDENCE APPENDIX**

No evidence was submitted pursuant to §§1.130, 1.131, or 1.132 of 37 C.F.R. or of any other evidence entered by the Examiner and relied upon by Appellants in the Appeal.



**RELATED PROCEEDINGS APPENDIX**

There are no related proceedings to the current proceeding.